

REMARKS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

This amendment is submitted in accordance with 37 C.F.R. § 1.116, which after final rejection permits entering of amendments canceling claims, complying with any requirement of form expressly set forth in a previous Office Action, or presenting rejected claims in better form for consideration on appeal. The present amendment places the claims in condition for allowance, and does not raise new issues requiring further consideration and/or search. Therefore, it is respectfully requested that the present amendment be entered under 37 C.F.R. § 1.116.

Claims 1-37 are pending. Claims 12, 13 and 24 are amended. No new matter is introduced.

In the outstanding Office Action, Claim 24 was objected to; Claims 12 and 13 were rejected under 35 U.S.C. § 112, second paragraph; Claims 1-16, 19, 26 and 32-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston (PCT International Publication No. WO 01/77815 A2, hereafter “Logston”) in view of Piskiel (PCT International Publication No. WO 97/46939, hereafter “Piskiel”); Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of Hutcheson (U.S. Patent No. 6,947,761, hereafter “Hutcheson”); Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of Suarez (U.S. Patent No. 5,790,789); Claims 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of De Mendonca (U.S. Patent Application Publication No. 2004/0172453, hereafter “De Mendonca”); Claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of Guruprasad (U.S. Patent No. 6,802,068); Claim 29 was rejected under 35

U.S.C. § 103(a) as being unpatentable over Logston, Piskiel and Guruprasad in further view of Iyer (U.S. Patent Application Publication No. 2004/0203749, hereafter “Iyer”); Claim 30 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of Podgorny (U.S. Patent No. 6,078,948, hereafter “Podgorny”); and Claims 31, 36 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston and Piskiel in further view of Vange (U.S. Patent No. 7,020,783, hereafter “Vange”).

Initially, Claim 24 is amended to address the informalities identified in the outstanding Office Action. Accordingly, it is respectfully requested that the objection to Claim 24 be withdrawn.

Further, Claims 12 and 13 are amended to adopt the Examiner’s suggestions. Therefore, it is respectfully requested that the rejection of Claims 12 and 13 under 35 U.S.C. § 112, second paragraph, be withdrawn.

With respect to the rejection of Claims 1-16, 19, 26 and 32-35 as being unpatentable over Logston in view Piskiel, Claim 1 recites *inter alia*, a data access, replication or communications system that includes:

a terminal including an electronic memory storing a terminal-side executable and a processor provided to execute the terminal-side executable to enable communication therewith *independent of a session-based protocol*; and

a server including an electronic memory storing a server-side executable and a processor provided to execute the server-side executable to enable communication therewith *independent of a session-based protocol*... (emphasis added).

Turning to the applied references, Logston describes a method and apparatus for determining and characterizing resource capabilities of client devices in a distributed application network. Logston describes a distributed application as a computer program that is broken into multiple components, such as a Distributed Application Client Portion (DACP)

and a Distributed Application Server Portion (DASP)<sup>1</sup> and whose components communicate with each other via a network.<sup>2</sup> However, as acknowledged by the outstanding Office Action, Logston does not describe enabling communication over the network independent of a session-based protocol.<sup>3</sup> To remedy this deficiency, the outstanding Office Action combines Logston with Piskiel.

Piskiel describes a balanced queue system for rapid and reliable transmission and reception of transaction messages in a distributed computing transaction processing environment.<sup>4</sup> More specifically, Piskiel illustrates that an originating node (200) includes a sending queue (214) to store messages transmitted to until a receiving node (220) until the receiving node (220) acknowledges receipt of the transmitted message.<sup>5</sup> Piskiel also illustrates that the receiving node (220) includes a receiving queue (234) to store received messages at a same relative location with sending queue (214) of the originating node (200).<sup>6</sup> Transmitted messages therefore include a reference number (refno) to identify their location in the sending queue (214).<sup>7</sup>

Piskiel also describes that the synchronization between the sending queue (214) and receiving queue (234) permits automatic error recovery when a communication error occurs because each node retains the messages in its queue.<sup>8</sup> However, Piskiel does not describe that during error recovery nodes communication is independent of a session-based protocol. In fact, Piskiel suggests that node communication during error recovery is in fact session based. For example, at page 15 of Piskiel TCP is noted as a communication environment which is well known in the art to provide session layer control for data transfer. Indeed,

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<sup>1</sup> Logston at page 1, lines 30-35.

<sup>2</sup> Logston at page 10, lines 13-35.

<sup>3</sup> See the outstanding Office Action at page 4, item 32.

<sup>4</sup> Piskiel at page 4, lines 10-20.

<sup>5</sup> Piskiel at page 15, lines 5-15; see also Fig. 2.

<sup>6</sup> Piskiel at page 16, lines 7-20; see also Fig. 2.

<sup>7</sup> Piskiel at page 15, lines 25-30.

<sup>8</sup> Piskiel at page 32, lines 15-28.

Daemon (208) appears to operate at the session layer. As such, it appears that the outstanding Office Action bases the rejection of Claims 1-16, 19, 26 and 32-35 on inherency.

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by a person of ordinary skill. Inherency, however, may **not** be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added) (citations omitted) (quoting *Continental Can Company USA, Inc. v. Monsanto Company*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991)). The outstanding Office Action provides no such factual basis or technical reasoning to support that the error recovery described in Piskiel **necessarily** occurs independently of a session-based protocol. Therefore, it is respectfully submitted that the rejection of Claims 1-16, 19, 26 and 32-35 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

As all other rejections of record rely upon the combination of Logston and Piskiel for describing the above-distinguished features, and the above-distinguished features are not disclosed or suggested by the combination of Logston and Piskiel, and are not disclosed in combination with any other art of record, Applicants respectfully submit that a *prima facie* case of obviousness has not been presented. Accordingly, Applicants respectfully request that the rejection of Claims 17-18, 20-25, 27-28, 29, 30, 31, 36 and 37 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a notice of allowance for Claims 1-37 is earnestly solicited.

Should, however, the above distinctions be found unpersuasive, Applicants respectfully request that the Examiner provide an explanation via advisory action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

Respectfully submitted,

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